

Chapter 2.58

HUMAN RIGHTS COMMISSION

2.58.010 Created--Membership--Meetings.

2.58.020 Filing statement of complaint.

2.58.030 Enforcement powers and procedures.

2.58.040 Adopting, amending and rescinding rules and regulations.

2.58.010 Created--Membership--Meetings.

A. There is created a human rights commission composed of not less than nine nor more than eleven members serving without compensation and broadly representative of the community's diversity.

B. Members must be a resident of Bartholomew County and shall be appointed by the common council.

C. Each appointment shall be for a term of three years. If a member dies or resigns before his term expires his successor shall be appointed to serve for the unexpired period of the term for which the member had been appointed.

D. The common council may remove commission members only for cause.

E. The commission shall elect from its membership at its first meeting and thereafter at its February meeting a chairperson, vice-chairperson, secretary and treasurer. These officers elected at the February meeting shall assume their offices on the following April first.

F. The commission shall meet once each month in City Hall at a published time and shall hold special meetings as the chairperson deems necessary or at the call of a majority of its members. Special meetings may be held in City Hall or in other locations within the city.

G. The expenses for carrying on the commission's activities, shall be budgeted for and paid out of the funds of the city treasury and appropriated by the common council for such purposes; however, the commission shall also have the authority to accept gifts or bequests, grants, or other payments, public or private, to help finance its activities. The commission may receive federal or state funds by worksharing or cooperative agreements or grants with such funds deposited in designated nonreverting funds. (Ord. 92-62, 1992; Ord. 92-45 (part), 1992: prior code § 12-11)

2.58.020 Filing statement of complaint.

A complaint shall be written, signed and notarized with the notary service available at the commission office free of charge to the complainant, and the complaint shall then be filed directly with the

commission and shall provide substantially the following information:

- A. The full name and address of complainant;
 - B. The name and address and business address of the person against whom the complaint is made;
 - C. The alleged discriminatory act or practice and a statement of particulars;
 - D. The date or dates of such alleged discriminatory act; or
 - E. A statement as to any other action, civil or criminal, instituted in any other form based upon such grievance as is alleged in the complaint, together with a statement as to the status or disposition of such action;
- E. No complaint, except those filed under Chapter 9.28, shall be held valid unless it is filed within ninety days from the date of the occurrence of such alleged discrimination, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or union. Complaints filed under Chapter 9.28 shall meet the jurisdictional time requirements of Chapter 9.28.
6. A person who files a complaint with this commission shall have no recourse to the Indiana Civil Rights Commission concerning any of the matters alleged in such complaints; however, nothing shall affect such person's right to pursue any and all other rights and remedies available in any other state or federal forum. Additionally, this section shall not affect the transfer to the Indiana Civil Rights Commission of a complaint or the deferral of a complaint to the Columbus Human Rights Commission from the Indiana Civil Rights Commission or the department of housing and urban development and shall not affect the election available in Section 9.28.360. (Ord. 92-45 (part), 1992: prior code § 12-12)

2.58.030 Enforcement powers and procedures.

- A. Relating to any matter under investigation or in question before the commission, the human rights commission has the power to:
- 1. Investigate, conciliate and hear complaints;
 - 2. Subpoena and compel the attendance of witnesses or production of pertinent documents and records;
 - 3. Administer oaths;
 - 4. Examine witnesses;
 - 5. Appoint hearing examiners or panels;
 - 6. Make findings and recommendations;
 - 7. Issue cease and desist order or orders requiring remedial actions;
 - 8. Order payment of actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits;
 - 9. Institute actions for appropriate legal or equitable relief in a circuit or superior court.
 - 10. Further, the commission has the powers granted under Chapter 9.28, pursuant to Indiana Code, 22-9.5-4-1 (b).

B. Additionally, the commission has the authority to:

1. Employ a director and other staff personnel;
2. Adopt rules and regulations to effectuate the purposes of this chapter; adopt rules and regulations specifying procedures deemed necessary for the orderly and equitable disposition of complaints.
3. Initiate complaints through a filing by the director, deputy director or chairperson, except that no individual who initiates a complaint may participate as a member of the department or commission of human rights in the hearing or disposition of the complaint;
4. Conduct programs and activities to carry out the public policy of the city as defined in this chapter within the territorial boundaries of the commission including the expenditure of appropriated city funds for community education and outreach designed to reduce the occurrence of discrimination as defined by this chapter; and
5. Prevent respondent or potential respondent from taking any retaliatory action against any other person because he or she: (a) is a complainant, or (b) a witness in a complaint, or (c) in any way assisted the commission in any matter which is or subsequently becomes under its investigation.

C. The commission shall render from time to time, but not less than once a year, a written report of its activities and recommendations to the mayor and common council.

D. The commission shall make a prompt and full investigation of each complaint of an unlawful discriminatory practice. The staff members who conduct an investigation shall not communicate their opinion and recommendation to the commissioners who may ultimately hear the complaint. If, following submission of the final investigative report, the chairperson and director determine that there is no probable cause to believe that a violation of this chapter has occurred, the complaint shall be dismissed and the complainant and the respondent notified of the dismissal.

E. If, after submission of the final investigative report, it is determined by the chairperson and the director that there is probable cause to believe that the allegations made in such complaint are true, a finding of probable cause shall be issued and the complainant and the respondent notified of such finding. In the event that a probable cause finding is issued, the parties shall be given the opportunity to conciliate. The commission shall assist and participate as needed in any efforts by the parties to conciliate their differences. If the parties are able to reach an agreement, the terms of said agreement shall be reduced to writing which shall be referred to as a conciliation agreement. The conciliation agreement shall be signed by the parties and by the chairperson and director.

F. In any case of a failure to eliminate the discrimination by means of a conciliation agreement, the commission shall hold a public hearing to determine whether or not an act of discrimination has occurred. The commission shall serve upon the person charged with engaging or having engaged in the discriminatory practice, hereinafter such person shall be referred to as respondent, a statement of charges made in the probable cause finding and a notice of the time and place of the hearing. The hearing shall be held not less than ten days nor more than sixty days, unless waived by mutual consent of complainant, the commission and respondent, after service of the statement of charges. The respondent shall have the right to file an answer to the statement of charges, to appear at the hearing in person or to be represented by an attorney and to examine and cross-examine witnesses.

G. Upon notice that a complaint is the subject of an action in federal or superior or circuit court, the commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact, probable cause findings, or orders concerning that complaint.

H. If upon all the evidence presented a majority of the commissioners hearing the case find that the

respondent has not engaged in discrimination, it shall state its findings of fact and dismiss the complaint. If upon all the evidence presented a majority of the commissioners hearing the case find that the respondent has engaged or is engaging in a discriminatory practice, it shall state its findings of fact and shall issue such order as the facts warrant, including an order requiring such respondent to cease and desist from the discriminatory practice and requiring such respondent to take such affirmative action as will effectuate the purposes of this chapter and other appropriate relief. In the event the commission is composed of nine members, a minimum of five commissioners is required to conduct a valid hearing; in the event the commission is composed of ten members, a minimum of six commissioners is required to conduct a valid hearing; and in the event the commission is composed of eleven members, a minimum of seven commissioners is required to conduct a valid hearing, except if commissioner disqualification due to conflicts of interests prevents this minimum number of commissioners from being met. In such circumstances a valid hearing may be held with fewer members than the number of commissioners designated above.

I. A decision made by the commission may be appealed under the terms of Indiana Code, 4-22, the same as if it were a decision of a state agency. (Ord. 92-45 (part), 1992: prior code § 12-13)

2.58.040 Adopting, amending and rescinding rules and regulations.

The commission, after the holding of a public hearing and receiving comment on the proposed rules, may adopt, amend or rescind uniform rules of procedure to implement Chapters 9.24 and 9.28.

The rules and regulations of the commission shall be available to the public and copies of said rules and regulations of the commission shall be on file in the office of the clerk-treasurer of the city and in the offices of the commission. (Ord. 92-45 (part), 1992: prior code § 12-14)

Chapter 9.24

DISCRIMINATION GENERALLY

9.24.010 Definitions.

9.24.020 Public policy.

9.24.030 Discriminatory housing practices unlawful.

9.24.040 Sex discrimination.

9.24.050 Sexual harassment.

9.24.060 Pregnancy discrimination.

9.24.070 Wage discrimination.

9.24.080 Discrimination because of disability.

9.24.090 City contracts.

9.24.100 Territorial applicability of chapter.

9.24.010 Definitions.

As used in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the meaning described in this section:

"Affirmative action" means those acts which the commission, as defined in this section, deems necessary to assure compliance with this chapter.

"Age" means the chronological age of not less than forty (40) years.

"Aggrieved person" includes any person who:

1. Claims to have been injured by a discriminatory practice as defined by this chapter; or
2. Believes that injury by a discriminatory practice as defined by this chapter is about to occur.

"Ancestry" refers to both the county from which a person's ancestors came and the citizenship of a person's ancestors.

"Business" means any corporation or public association organized for profit.

"Charge" means the statement of facts upon which the commission has found probable cause to believe that a discriminatory practice has occurred or is about to occur.

"Commission" means the human rights commission created by Chapter 2.58.

"Commission attorney" means the city attorney or such assistant of such attorney as may be assigned to the commission.

"Complainant" means:

1. Any aggrieved person who files a complaint under this chapter; or
2. The director, deputy director or chairperson of the commission charging that a discriminatory practice was committed against a person other than himself or herself, or a class of people in order to vindicate the public policy of the city as defined by this chapter.

"Complaint" means any written grievance filed by a complainant with the commission, signed and verified before a notary public or another person duly authorized by law to administer oaths and take acknowledgments.

"Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent and the commission.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation accepted and agreed to by both the complainant and the respondent and the commission which is entered into in lieu of adjudication.

"Director" means the director of the human rights commission.

"Disability" means: With respect to a person:

1. A physical or mental impairment that substantially limits one or more of the person's major life activities;
2. A record of having an impairment described in subdivision (1) of this subsection;
3. Being regarded as having an impairment described in said subdivision.

The term "disability" does not include current illegal use of or addition to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"Discriminatory practice" means

1. The exclusion of an individual from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran; or a system which excludes individuals from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran; or
2. The promotion of racial segregation or separation in any manner, including but not limited to, the inducing of, or the attempting to induce, for profit, any individual to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of an individual or individuals of a particular race, religion, color, sex, disability, national original, ancestry, sexual orientation, gender identity, age, or status as veteran; or
3. A violation of Section 9.20.050 which occurs after September 13, 1992 and is committed by a covered entity as defined by Section 9.20.050.

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment or the extending of credit (as credit is defined by Indiana Code, 24-4.5-1-301) shall be considered unlawful if it is specifically exempted by this chapter.

"Dwelling" means:

1. Any building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families; or
2. Any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by subdivision (1) of this subsection.

"Educational institution" means all public and private school and training centers, except universities supported in whole or in part by state funds.

"Employee" means any individual employed by another for wages or salary; provided, that it shall not include any individual employed by his/her parents, spouse or child, or in the domestic service of any individual.

"Employer" means the city or any department thereof and any person employing six or more individuals within the city except that the term "employer" does not include:

1. Any nonprofit corporation or association organized exclusively for fraternal or religious purposes;
2. Any school, educational or charitable religious institutions owned or conducted by, or affiliated with, a church or religious institution; or
3. Any exclusively social club, corporation or association that is not organized for profit.

"Employment agency" means any person undertaking with or without compensation to procure, recruit, refer or place employees.

"Familial status" means:

1. One or more individuals (who have not attained the age of eighteen years) being domiciled with:
 - a. A parent or another person having legal custody of such individual or individuals, or
 - b. The designees or such parent or other person having such custody, with the written permission of such parent or other person;

2. Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

"Family" includes a single individual.

"Gender identity" means a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth.

"Housing unit" means any area which is:

1. A single room or suite of rooms or an apartment or dwelling occupied or intended for occupancy as separate living quarters by an individual, by a family or by a group of individuals living together; or
2. A parcel of real property or a lot available for the construction of a housing unit.

"Labor organization" means any organization which exists for the purpose, in whole or in part, of collectively bargaining or of dealing with employers concerning wages, grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment.

"National origin" refers to both the country from which a person came and the citizenship of the person.

"Owner" means the lessee, sublessee, assignee, managing agent or other person having the right of ownership or possession or the right to sell, rent or lease any housing unit.

"Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustee, trustees in bankruptcy, receivers and other organized groups of persons.

"Probable cause" exists when facts and circumstances are sufficient so a reasonably prudent individual would be justified in believing that a discriminatory act has been or is being committed.

"Public accommodations" means any establishment which caters or offers its services or facilities or goods to the general public.

"Public hearing" means a hearing held by the commission to determine whether or not an act of discrimination has occurred. The hearing shall be held in the event that the investigation of a complaint has resulted in a finding of probable cause to believe that discrimination has occurred, and the complaint has not been closed by a conciliation agreement and a timely election has not been made under Section 9.28.360.

"Real estate broker" means any person, partnership, association or corporation who for a fee or other valuable consideration sells, purchases, exchanges or rents, negotiates or offers or attempts to negotiate the sale, purchase, exchange or rental of the real property of another, or holds himself out as engaged in the business of selling, purchasing, exchanging or renting the real property of another, or collects rental for the use of real property of another.

"Real estate salesperson or agent" means any person employed by a real estate broker to perform or assist in the performance of any or all of the functions of a real estate broker. The term "agent" as used in Section 9.24.030(C) and (E) shall not include the owner, publisher or operator or employees of the owner, publisher or operator of any newspaper, radio or television station with respect to any announcement, advertisement or commercial purchased by any other person for publication or broadcast in or by any such newspaper, radio or television station or with respect to any news story, editorial or comment by a member of the public published or broadcast in or by any such newspaper, radio or television station.

"Religion" means a practice including moral or ethical beliefs as to what is right and wrong which are

sincerely held with the strength of traditional views.

"To rent" includes to lease, to sublease, to let or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

"Respondent" means:

1. The person accused of a violation of this chapter in a complaint or an amendment to a complaint; or
2. Any person joined as an additional or a substitute respondent.

"Sex" is the word used to describe the biological differences that exist between male and female individuals.

"Sexual orientation" means an individual's actual or perceived identity or practice as a male or female homosexual person, bisexual person or heterosexual person.

"State agency" means every office, officer, board, commission, department, division, bureau, committee, fund, agency and without limitation by reason of any enumeration herein, every other instrumentality of the state of Indiana, every hospital, every penal institution and every other institutional enterprise and activity of the state of Indiana, wherever located; the universities supported in whole or in part by state funds; and the Judicial Department of the state of Indiana. "State agency" does not mean counties, county departments of public welfare, cities, towns, townships, school cities, school towns, school townships, school districts or their municipal corporations, political subdivision or units of local government.

"Veteran" shall have the meaning as defined in Indiana Code, 22-9-1-3.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-1)

9.24.020 Public policy.

A. It is the public policy of the city to provide all persons an equal opportunity for and in education, employment, public accommodations and acquisition through purchase or rental of real property including but not limited to housing. Equal educational and employment opportunities and equal access to and use of public accommodations and equal opportunities for acquisition of real property and access to credit as defined in Indiana Code, 24-4.5-1-301, are declared to be civil rights.

B. The practice of denying these civil rights to a person by reason of race, religion, color, sex, pregnancy, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran of such individual is contrary to the principles of equal opportunity stated in this chapter and shall be considered discriminatory practices.

C. The promotion of equal opportunity without regard to race, religion, color, sex, pregnancy, disability, national origin, ancestry, sexual orientation, gender identity, age or status as veteran through enforcement, public education and other reasonable methods is the purpose of this chapter. It is also its purpose to protect employers, labor organizations, employment agencies, property owners, real estate brokers, lending institutions and insurance companies from unfounded charges of discrimination through the professional investigation and resolution of complaints.

D. This chapter shall be construed broadly to effectuate its purpose.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-2)

9.24.030 Discriminatory housing practices unlawful.

The following discriminatory housing practices are declared to be unlawful:

A. For any person or agent to refuse to sell, lease, rent, assign or otherwise transfer or refuse to negotiate for the sale, lease, sublease, rental or other transfer of the title, leasehold or other interest in any housing unit to any person or to represent that the housing unit is not available for inspection, sale, lease, sublease, rental, assignment or other transfer, when in fact, it is so available or otherwise deny or withhold any housing unit from any person because of race, color, sex, disability, national origin, ancestry, religion, sexual orientation, gender identity, age, or status as veteran;

B. For any person or agent to discriminate in the terms, conditions or privileges of the sale, rental or lease of any housing unit or in the furnishing of any facilities or services to any person for any housing unit on account of race, color, sex, disability, national origin, ancestry, religion, sexual orientation, gender identity age, or status as veteran;

C. For any person or agent to publish or circulate or cause to be published or circulated any notice, statement or advertisement or to announce a policy or to use any form or application for the purchase, lease, rental, financing or insuring of housing in connection with the prospective purchase, lease, rental, financing or insuring of housing which expresses directly or indirectly any limitation or specification as to race, color, sex, disability, national origin, religion, ancestry, sexual orientation, gender identity, age, or status as veteran or any intent to make any such limitations, specifications or discrimination;

D. For any lending institution, including government agencies, to discriminate in lending money, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing unit because of religion, race, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran of any prospective buyer or seller;

E. For any person, individually or in combination, to aid, incite, compel, coerce, participate in or contact for the joining of any act declared to be an unlawful housing practice under this section or to directly or indirectly commit any act declared by this section to be a discriminatory housing practice.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3)

9.24.040 Sex discrimination.

A. A written or unwritten act, policy, practice or system which excludes an individual from equal opportunities on the basis of sex or because of sex, sexual orientation, or gender identity in any terms or conditions of employment, education, public accommodations, credit or housing, shall be considered a discriminatory practice.

B. The term "sex discrimination" as it applies to segregation or separation in this chapter applies to all covered types of employment, education, public accommodations and housing; provided, however, that:

1. It shall not be a discriminatory practice to maintain separate restrooms; and that

2. It shall not be unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or to employ another individual in any such program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

that

3. It shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only; and that

4. It shall not be a discriminatory practice under Section 9.24.030 for an owner of a single family unit who resides therein but rents or leases rooms in that same unit to lease to individuals of one sex only.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-4)

9.24.050 Sexual harassment.

Harassment on the basis of sex, sexual orientation, or gender identity shall be considered an unlawful employment practice. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when:

A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or

D. In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred.

The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-5)

9.24.060 Pregnancy discrimination.

A. A written or unwritten employment policy or practice which excludes from employment opportunities applicants or employees because of pregnancy, childbirth or related medical conditions is in violation of this chapter.

B. Disabilities caused or contributed to by pregnancy, childbirth or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects the bargaining agreements in regard to abortion.

C. Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such termination violates this chapter if it has a disparate impact on employees of one sex and is not justified by business necessity.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-6)

9.24.070 Wage discrimination.

No employer shall discriminate within any establishment between employees on the basis of sex, sexual orientation, or gender identity by paying wages to employees in such establishment, a rate less than the rate at which he or she pays wages to employees of the opposite sex in such establishment for equal work on jobs of the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or
4. A differential based on any other factor other than sex.

B. An employer who is paying a wage rate differential in violation of the above shall not, in order to comply with this provision, reduce the wage rate of any other employee.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-7)

9.24.080 Discrimination because of disability.

A. The prohibition against discrimination in employment, because of disability does not apply to failure of an employer to employ or retain as an employee any individual who because of a disability is physically or otherwise unable to efficiently and safely perform, at the standards set by the employer, the duties required in that job.

B. After a person with a disability is employed, the employer shall not be required under this chapter to promote or transfer such person to another job or occupation, unless, prior to such transfer, such person is qualified for such job or occupation.

C. This section shall not be construed to require any employer to modify any physical accommodations or administrative procedures to accommodate a handicapped individual.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-8)

9.24.090 City contracts.

Every contract to which the city or any of its political or civil subdivisions is a party, including franchises granted to the utility service board of the city, shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment who is to be employed in the performance of such contract with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of his or her race, religion, color, sex, disability, national origin, ancestry, sexual orientation,

gender identity, age, or status as veteran. Breach of this covenant may be considered a material breach of the contract.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-9)

9.24.100 Territorial applicability of chapter.

This chapter applies to practices within the city and to housing units and dwellings located within the city, except that a commission formed pursuant to this chapter shall have no jurisdiction over the state or any of its agencies. Such state agencies are those as defined under Section 9.20.010.

(Ord. 19-2015 § 1 (part), 2015; Ord. 92-45 (part); prior code § 12-10)

Chapter 9.28

HOUSING DISCRIMINATION

9.28.010 Purpose.

9.28.020 Exemptions--Sale or rental of single-family houses--Rooms or units in certain dwellings.

9.28.030 Exemptions--Religious organizations.

9.28.040 Exemptions--Private clubs.

9.28.050 Exemptions--Housing for older persons.

9.28.060 Exemptions--Appraisals of property.

9.28.070 Health or safety restrictions--Other laws not affected.

9.28.080 Administration of chapter provisions.

9.28.090 Adoption of rules.

9.28.100 Action on complaints alleging violations.

9.28.110 Delegation of powers and duties to director.

9.28.120 Cooperation with other entities.

9.28.130 Subpoenas and discovery provisions.

9.28.140 Deferral and transfer of complaints.

9.28.150 Acceptance of gifts and grants.

9.28.160 Discrimination in connection with sale or rental of dwellings prohibited--Exception.

9.28.170 Discriminatory notices, statements or advertising prohibited.

9.28.180 Representations regarding availability of dwelling for inspection.

9.28.190 Representations regarding entry of certain persons into neighborhood.

9.28.200 Persons with a disability--Discrimination prohibited.

9.28.210 Residential real estate related transaction defined.

9.28.220 Discrimination prohibited--Selling, brokering or appraising residential real property.

9.28.230 Discrimination prohibited--Brokers' organizations, services or facilities.

9.28.240 Coercion, intimidation, threats or interference.

9.28.250 Administrative enforcement--Investigation of discriminatory housing practices--Filing of complaint--Amendment--Notice.

9.28.260 Administrative enforcement--Complaint response.

9.28.270 Administrative enforcement--Investigation of complaints referred by federal government.

9.28.280 Administrative enforcement--Joinder of additional or substitute respondents.

9.28.290 Administrative enforcement--Conciliation agreements.

9.28.300 Administrative enforcement--Action for temporary or preliminary relief.

9.28.310 Administrative enforcement--Final investigative report.

9.28.320 Administrative enforcement--Determination of probable cause.

9.28.330 Administrative enforcement--Finding of probable cause--Contents--Copies.

9.28.340 Administrative enforcement--Dismissal of complaint.

9.28.350 Administrative enforcement--Finding of probable cause precluded after commencement of civil actions.

9.28.360 Administrative enforcement--Election to have claims decided in civil action.

9.28.370 Administrative enforcement--Filing of civil action--Intervention by aggrieved persons--Granting of relief.

9.28.380 Administrative enforcement--Hearing.

9.28.390 Administrative enforcement--Order for appropriate relief--Penalties.

9.28.400 Administrative enforcement--Certain contracts, sales, encumbrances or leases unaffected by order.

9.28.410 Administrative enforcement--Respondents subject to licensing or

regulation by governmental agencies.

9.28.420 Administrative enforcement--Issuance of subsequent orders to same respondent.

9.28.430 Enforcement by private persons--Filing of action by aggrieved person.

9.28.440 Enforcement by private persons--Award of relief.

9.28.450 Enforcement by private persons--Certain contracts, sales, encumbrances or leases unaffected by relief granted.

9.28.460 Intervention by commission.

9.28.470 Enforcement by the commission--Filing of civil action.

9.28.480 Enforcement by the commission--Award of relief.

9.28.490 Enforcement by the commission--Intervention in civil action.

9.28.500 Enforcement of subpoena.

9.28.510 Attorney's fees and court costs.

9.28.010 Purpose.

The purposes of this chapter are the following:

A. To provide fair housing rights and remedies in addition to those in Section 9.24.030;

B. To provide fair housing law that is substantially equivalent to federal law (Title VIII of the Civil Rights Act of 1988).

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-1)

9.28.020 Exemptions--Sale or rental of single-family houses--Rooms or units in certain dwellings.

A. Subject to subsection B of this section, Sections 9.28.160 through 9.28.240 do not apply to the following:

1. The sale or rental of a single-family house sold or rented by an owner if:

a. The owner does not:

i. Own more than three single-family houses at any one time, or

ii. Own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time, and

b. The house was sold or rented without:

1. The use of the sale or rental facilities or services of a real estate broker, an agent or a salesman licensed under Indiana Code, 25-34.1; or of an employee or agent of a licensed broker, an agent or a

salesman; or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families, or

ii. The publication, posting or mailing of a notice, a statement or an advertisement prohibited by Section 9.28.170.

2. The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence.

B. The exemption in subsection (A)(1) of this section applies to only one sale or rental in a twenty-four month period if the owner was not the most recent resident of the house at the time of the sale or rental.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-1)

9.28.030 Exemptions--Religious organizations.

This chapter does not prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from:

A. Limiting the sale, rental or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

B. Giving preference to persons of the same religion, unless membership in such religion is restricted because of race, color, sex, disability, national origin, religion, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-2)

9.28.040 Exemptions--Private clubs.

This chapter does not prohibit a private club, not in fact open to the public, which as an incident to the club's primary purpose, provides lodging which the club owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members, unless membership in such club is restricted because of race, color, sex, disability, national origin, religion, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-3)

9.28.050 Exemptions--Housing for older persons.

A. As used in this chapter, "housing for older persons" means housing that the commission determines is:

1. Specifically designed and operated to assist elderly persons under a federal or state program;
2. Intended for, and solely occupied by, persons at least sixty-two years of age; or
3. Intended and operated for occupancy by at least one person at least fifty-five years of age in each unit.

B. Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirements of subsection (A)(2) or (A)(3) of this section does not fail to meet the requirements for housing for older persons if:

1. The unoccupied units are reserved for persons who meet the age requirements of subsection (A)(2) or (A)(3) of this section;

2. The occupants who do not meet the age requirements of said subsection (A)(2) or (A)(3) have resided in the housing since September 13, 1988, or an earlier date, and the persons who became occupants after September 13, 1988, meet the age requirements of said subsection (A)(2) or (A)(3).

C. The commission shall adopt rules under Section 2.58.030(B)(2) to establish criteria for making determinations under subsection A of this section. These rules must include at least the following provisions:

1. Except as provided in subsection (C)(2) of this section, the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons.

2. If the provision of the facilities and services described in subsection (C)(1) of this section is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

3. At least eighty percent of the units must be occupied by at least one person who is at least fifty-five years of age.

4. The owner or manager of the housing must publish and adhere to policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons who are at least fifty-five years of age.

D. The provisions of Sections 9.28.160 through 9.28.240 relating to familial status do not apply to housing for older persons.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-4)

9.28.060 Exemptions--Appraisals of property.

This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, sex, disability, national origin, religion, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-5)

9.28.070 Health or safety restrictions--Other laws not affected.

A. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or restriction relating to health or safety standards.

B. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-2-6)

9.28.080 Administration of chapter provisions.

The commission shall administer this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-1)

9.28.090 Adoption of rules.

The commission may adopt rules under Section 2.58.030(B)(2) necessary to implement this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-2)

9.28.100 Action on complaints alleging violations.

As provided by Section 9.28.290, the commission shall receive, investigate, conciliate and act on complaints alleging violations of this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-3)

9.28.110 Delegation of powers and duties to director.

The commission may, by rule, authorize the director of the commission to exercise the commission's powers or perform the commission's duties under this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-4)

9.28.120 Cooperation with other entities.

The commission shall cooperate with and, as appropriate, may seek or provide technical and other assistance to federal, state, local and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-5)

9.28.130 Subpoenas and discovery provisions.

A. The commission may issue subpoenas and order discovery as provided by this chapter in aid of investigations and hearings under this chapter.

B. Subpoenas and discovery in aid of investigations may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in a circuit court. Subpoenas and discovery in aid of hearings are subject to Indiana Code, 4-21.5.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-6)

9.28.140 Deferral and transfer of complaints.

A. The commission may defer proceedings under this chapter and transfer a complaint to the Indiana

Civil Rights Commission if the Indiana Civil Rights Commission has been recognized by the United States Department of Housing and Urban Development as having adopted statutes providing fair housing rights and remedies that are substantially equivalent to the rights and remedies granted under federal law.

B. The commission may defer proceedings under this chapter and transfer a complaint to the Department of Housing and Urban Development pursuant to the rules and regulations of this commission and of the Department of Housing and Urban Development.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-7)

9.28.150 Acceptance of gifts and grants.

The commission may accept gifts and grants from any public or private source for the purpose of administering this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-3-8)

9.28.160 Discrimination in connection with sale or rental of dwellings prohibited--Exception.

A. A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran.

B. A person may not discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran.

C. This chapter does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-1)

9.28.170 Discriminatory notices, statements or advertising prohibited.

A person may not make, print or publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran, or an intention to make such a preference, limitation or discrimination.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-2)

9.28.180 Representations regarding availability of dwelling for inspection.

A person may not represent to any person because of race, color, religion, sex, disability, familial

status, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-3)

9.28.190 Representations regarding entry of certain persons into neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-4)

9.28.200 Persons with a disability--Discrimination prohibited.

A. A person may not discriminate in the sale or rental or otherwise make available or deny a dwelling to any buyer or renter because of a disability of:

1. The buyer or renter;
2. A person residing in or intending to reside in the dwelling after the dwelling is sold, rented or made available; or
3. Any person associated with the buyer or renter.

B. A person may not discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

1. The person;
2. A person residing in or intending to reside in the dwelling after the dwelling is sold, rented or made available; or
3. Any person associated with the person.

C. For purposes of this section only, "discrimination" includes the following:

1. A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to afford the person full enjoyment of the premises.

- a. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a manner that is consistent with the quality of the existing premises and that any required building permits will be obtained.

- b. A landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- c. The landlord may not increase for persons with a disability any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be

available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

2. A refusal to make reasonable accommodations in rules, policies, practices or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy a dwelling.

3. In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

a. The public use and common use parts of the dwellings are readily accessible to and usable by persons with a disability;

b. All the doors are designed to allow passage into and within all premises within the dwellings and are sufficiently wide to allow passage by persons with a disability in wheelchairs; and

c. All premises within the dwellings contain the following features of adaptive design:

i. An accessible route into and through the dwelling;

ii. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

iii. Reinforcements in bathroom walls to allow later installation of grab bars; and

iv. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

D. As used in subsection C of this section, "covered multifamily dwellings" means:

1. Buildings consisting of four or more units if the buildings have one or more elevators; and

2. Ground floor units in other buildings consisting of four or more units.

E. Compliance with the rules of the fire prevention and building safety commission that incorporate by reference the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1) satisfies the requirements of subsection (C)(3)(c) of this section.

F. This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-5)

9.28.210 Residential real estate related transaction defined.

As used in Sections 9.28.160 through 9.28.240, "residential real estate related transaction" means the following: Making or purchasing loans or providing other financial assistance:

A. To purchase, construct, improve, repair or maintain a dwelling;

B. To secure residential real estate.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-6)

9.28.220 Discrimination prohibited--Selling, brokering or appraising residential real property.

A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-7)

9.28.230 Discrimination prohibited--Brokers' organizations, services or facilities.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership or participation in such an organization, service or facility because of race, color, religion, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity, age, or status as veteran.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-8)

9.28.240 Coercion, intimidation, threats or interference.

A person may not coerce, intimidate, threaten or interfere with any other person:

- A. In the exercise or enjoyment of any right granted or protected by this chapter; or
- B. Because the person has exercised or enjoyed, or has encouraged another person in the exercise or enjoyment of, any right granted or protected by this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-4-9)

9.28.250 Administrative enforcement--Investigation of discriminatory housing practices--Filing of complaint--Amendment--Notice.

The commission shall investigate alleged discriminatory housing practices.

A. A complaint concerning an alleged discriminatory housing practice as defined in this chapter must be filed not later than one hundred and eighty days after an alleged discriminatory housing practice has occurred or terminated, whichever is later.

B. A complaint under this chapter may be reasonably and fairly amended at any time.

C. When a complaint is filed under this chapter the commission shall do the following:

1. Give the aggrieved person notice that the complaint has been received;
2. Advise the aggrieved person of the time limits and choice of forums under this chapter;
3. Not later than twenty days after the filing of the complaint or the identification of an additional respondent under Section 9.28.280, serve on each respondent:
 - a. A notice identifying the alleged discriminatory housing practice and advising the respondent of the

procedural rights and obligations of a respondent under this chapter, and

- b. A copy of the original complaint.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-1)

9.28.260 Administrative enforcement--Complaint response.

A. Not later than ten days after receipt of the notice and copy under Section 9.28.250(C)(3), a respondent may file an answer to the complaint.

B. An answer must be:

- 1. In writing;
- 2. Under oath; and
- 3. In the form prescribed by the commission.

C. An answer may be reasonably and fairly amended at any time with the consent of the director.

D. An answer does not inhibit the investigation of a complaint.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-2)

9.28.270 Administrative enforcement--Investigation of complaints referred by federal government.

A. If the federal government or the state has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall promptly investigate the allegations set forth in the complaint.

B. The commission shall investigate all complaints, and except as provided by subsection (C) of this section, shall complete an investigation not later than one hundred days after the date the complaint is filed, or if the commission is unable to complete the investigation within the one hundred day period, shall dispose of all administrative proceedings related to the investigation not later than one year after the date the complaint is filed.

C. If the commission is unable to complete an investigation within the time periods prescribed by subsection B of this section, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-3)

9.28.280 Administrative enforcement--Joinder of additional or substitute respondents.

A. The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation the commission determines that the person should be accused of a discriminatory housing practice.

B. In addition to the information required in the notice under Section 9.28.250(C)(3), the commission shall include in a notice to a respondent joined under this section an explanation of the basis for the determination that the person is properly joined as a respondent.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-4)

9.28.290 Administrative enforcement--Conciliation agreements.

- A. The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint.
- B. A conciliation agreement is an agreement between a respondent and the complainant and is subject to commission approval.
- C. A conciliation agreement may provide for binding arbitration or other methods of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.
- D. A conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not necessary to further the purposes of this chapter.
- E. Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.
- F. After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigation report relating to that investigation.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-5)

9.28.300 Administrative enforcement--Action for temporary or preliminary relief.

- A. If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the commission may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint in a circuit or superior court that is located in the county in which the alleged discriminatory housing practice occurred.
- B. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the Indiana Rules of Trial Procedure.
- C. The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings under Section 9.28.380.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-6)

9.28.310 Administrative enforcement--Final investigative report.

- A. The commission shall prepare a final investigative report showing the following:
 - 1. The names and dates of contracts with witnesses;
 - 2. A summary of correspondence and other contracts with the aggrieved person and the respondent showing the dates of the correspondence and contracts;

3. A summary description of other pertinent records;
4. A summary of witness statements;
5. Answers to interrogatories.

B. A final report under this chapter may be amended if additional evidence is discovered.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-7)

9.28.320 Administrative enforcement--Determination of probable cause.

A commission shall determine based on the facts whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

B. The commission shall make the determination under subsection A of this section not later than one hundred days after the date a complaint is filed unless:

1. It is impracticable to make the determination; or
2. The commission has approved a conciliation agreement relating to the complaint.

C. If it is impracticable to make the determination within the time period provided by subsection B of this section, the commission shall notify the complainant and respondent in writing of the reasons for the delay.

D. If the commission determines that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall immediately issue a finding of probable cause on behalf of the aggrieved person.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-8)

9.28.330 Administrative enforcement--Finding of probable cause--Contents--Copies.

A. A finding of probable cause issued under Section 9.28.320:

1. Must consist of a short and plain statement of the facts on which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;
2. Must be based on the final investigative report; and
3. Need not be limited to the facts or grounds alleged in the complaint.

B. Not later than twenty days after the commission issues a finding of probable cause, the commission shall send a copy of the finding of probable cause with the information concerning the election under Section 9.28.360 to the following:

1. Each respondent, together with a notice of the opportunity for a hearing provided by Section 9.28.380;
2. Each aggrieved person on whose behalf the complaint was filed.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-9)

9.28.340 Administrative enforcement--Dismissal of complaint.

A. If the commission determines that no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

B. The commission shall make public disclosure of each dismissal under this section.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-10)

9.28.350 Administrative enforcement--Finding of probable cause precluded after commencement of civil actions.

The commission may not issue a finding of probable cause under this chapter regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-11)

9.28.360 Administrative enforcement--Election to have claims decided in civil action.

A. A complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in a finding of probable cause decided in a civil action as provided by Section 9.28.370.

B. The election must be made not later than twenty days after the date of receipt by the electing person of service under Section 9.28.330(B) or, in the case of the commission, not later than twenty days after the date the finding of probable cause was issued.

C. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the finding of probable cause relates.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-12)

9.28.370 Administrative enforcement--Filing of civil action--Intervention by aggrieved persons--Granting of relief.

A. If a timely election is made under Section 9.28.360, the commission shall:

Within five days of the commission's receipt of the election, transfer the complaint to the Indiana Civil Rights Commission for the Indiana Civil Rights Commission's filing of a civil action on behalf of the aggrieved party. Upon such transfer, neither the city of Columbus nor the commission shall be a party to such action.

B. An aggrieved person may intervene in the action.

C. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under Indiana Code, 22-9.5-7.

D. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with

discovery orders entered by the court.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-13)

9.28.380 Administrative enforcement--Hearing.

A. If a timely election is not made under Section 9.28.360, the commission shall provide for a hearing on the finding of probable cause.

B. Except as provided by subsection C of this section, Indiana Code, 4-21.5 governs a hearing and an appeal of a hearing under this section.

C. A hearing under this section may not continue regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing practice.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-14)

9.28.390 Administrative enforcement--Order for appropriate relief--Penalties.

A. If the commission determines at a hearing under Section 9.28.380 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs and other injunctive or equitable relief.

B. To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following:

1. Ten thousand dollars if the respondent has not been adjudged by order of the commission or a court to have committed a prior discriminatory housing practice.
 2. Except as provided by subsection C of this section, twenty-five thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the finding of probable cause.
 3. Except as provided by subsection C of this section, fifty thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the finding of probable cause.
- C. If the acts constituting the discriminatory housing practice that is the object of the finding of probable cause are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsections (B)(2) and (3) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

D. The commission may sue to recover a civil penalty due under this section.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-15)

9.28.400 Administrative enforcement--Certain contracts, sales, encumbrances or leases unaffected

by order.

A commission order under Section 9.28.390 does not affect a contract, a sale, an encumbrance or a lease that:

- A. Was consummated before the commission issued the order; and
- B. Involved a bona fide purchaser, an encumbrancer, or a tenant who did not have actual notice of the finding of probable cause filed under this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-16)

9.28.410 Administrative enforcement--Respondents subject to licensing or regulation by governmental agencies.

If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of the order:

- A. Send copies of the findings and the order to the governmental agency; and
- B. Recommend to the governmental agency appropriate disciplinary action.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-17)

9.28.420 Administrative enforcement--Issuance of subsequent orders to same respondent.

If the commission issues an order against a respondent against whom another order was issued within the preceding five years under Section 9.28.390, the commission shall send a copy of each order issued under that section to the Attorney General.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-5-18)

9.28.430 Enforcement by private persons--Filing of action by aggrieved person.

A. Pursuant to Indiana Code, 22-9.5-7-1, an aggrieved person may file a civil action in the circuit or superior court located in the county in which the alleged discriminatory practice occurred not later than one year after the occurrence of the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

B. The one-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or finding of probable cause under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.

C. An aggrieved person may file an action under this section whether or not a complaint has been filed under this chapter and without regard to the status of any complaint filed under this chapter.

D. If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under this section with respect to the alleged discriminatory

housing practice that forms the basis for the complaint except to enforce the terms of the agreement.

E. An aggrieved person may not file an action under this section with respect to an alleged discriminatory housing practice that forms the basis of a finding of probable cause issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the finding of probable cause.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-6-1)

9.28.440 Enforcement by private persons--Award of relief.

If the court finds that a discriminatory housing practice has occurred or is about to occur in an action under this chapter, pursuant to Indiana Code, 22-9.5-7-2 the court may award to the prevailing party the following:

A. Actual and punitive damages;

B. Reasonable attorney's fees;

C. Court costs;

D. Subject to Indiana Code, 22-9.5-7-3, any permanent or temporary injunction, temporary restraining order or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-6-2)

9.28.450 Enforcement by private persons--Certain contracts, sales, encumbrances or leases unaffected by relief granted.

Relief granted under this chapter does not affect a contract, a sale, an encumbrance or a lease that:

A. Was consummated before the granting of the relief; and

B. Involved a bona fide purchaser, an encumbrancer or a tenant who did not have actual notice of the filing of a complaint or a civil action under this chapter.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-6-3)

9.28.460 Intervention by commission.

A. The commission may intervene in an action under this chapter if the commission determines that the case is of general public importance.

B. The commission may obtain the same relief available to the commission under Section 9.28.480.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-6-4)

9.28.470 Enforcement by the commission--Filing of civil action.

Pursuant to Indiana Code, 22-9.5-8-1, the commission may file a civil action for appropriate relief if the commission has probable cause to believe that:

A. A person is engaged in a pattern or practice of resistance to the full enjoyment of any right granted by this chapter; or

B. A person has been denied any right granted by this chapter and that denial raises an issue of general public importance.

An action under this section may be filed in a circuit or superior court located in the county in which the alleged pattern, practice or denial occurred.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-7-2)

9.28.480 Enforcement by the commission--Award of relief.

In an action filed under Sections 9.28.470 through 9.28.500, the court may do the following:

A. Award preventive relief, including a permanent or temporary injunction, restraining order or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter;

B. Award other appropriate relief, including monetary damages, reasonable attorney's fees and court costs;

C. To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed the following:

1. Fifty thousand dollars for a first violation,
2. One hundred thousand dollars for a second or subsequent violation.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-7-2)

9.28.490 Enforcement by the commission--Intervention in civil action.

A person may intervene in an action filed under Sections 9.28.470 through 9.28.500, if the person is:

A. An aggrieved person to the discriminatory housing practice; or

B. A party to a conciliation agreement concerning the discriminatory housing practice.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-7-3)

9.28.500 Enforcement of subpoena.

The commission attorney, on behalf of the commission or other party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in the court in circuit or superior court.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-7-4)

9.28.510 Attorney's fees and court costs.

A court in a civil action brought under this chapter or the commission in an administrative hearing under Section 9.28.380 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

(Ord. 19-2015 § 2 (part), 2015; Ord. 92-45 (part), 1992; prior code § 12-3.5-8-1)